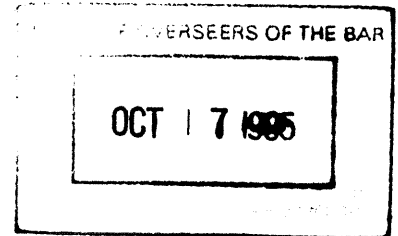


STATE OF MAINE

Kennebec, ss.

Board of Overseers of the Bar Grievance
Commission
File No. 94-S-5



BOARD OF OVERSEERS OF THE BAR,

Petitioner

v.

REPORT OF FINDINGS AND CONCLUSIONS OF
THE GRIEVANCE COMMISSION PANEL

JULIO V. DeSANCTIS, ESQ.
of ORRINGTON, MAINE

Respondent

On Monday, August 21, 1995, pursuant to notice, the undersigned panel of the Grievance Commission conducted a hearing on a disciplinary petition, dated May 16, 1995, seeking disciplinary action against Respondent Julio V. DeSanctis. The hearing was open to the public and held at the offices of the Board of Overseers of the Bar in Augusta. The Board was represented by J. Scott Davis, Bar Counsel, and the Respondent appeared pro se. The Respondent had filed a response to the petition that denied the allegations of misconduct. There was no objection to the composition of the panel.

At the hearing, testimony was taken from the Respondent and from his former client, Judith Leighton, the Complainant. Board Exhibits 1-5 and 8 and Respondent's Exhibits 1-23 were admitted.

FINDINGS OF FACT

The panel finds the following facts:

1. At all times material to the petition, the Respondent was an attorney admitted to and engaging in the practice of law in the State of Maine subject to the Maine Bar Rules.

2. In September, 1993, the Respondent entered into an attorney-client relationship with Judith A. Leighton for the purpose of representing her in her divorce.

3. The Respondent testified that he quoted a flat fee of \$500 plus disbursements; the Complainant states that she understood the fee was \$200. We find that there was confusion on this point, largely because of the absence of a written fee agreement.

4. The divorce itself was an uncomplicated domestic relations matter with few assets. Ms. Leighton's principal concern was to obtain custody of her children, subject to visitation rights for her husband.

5. A mediation was scheduled in Ellsworth on December 1, 1993. The Respondent realized that he had a conflict in his schedule and moved to reschedule a pretrial conference in another matter to afford him more time to attend the mediation.

6. On the day before the mediation, the Respondent was informed that he was to appear for a jury trial in another county. His attempts to telephone Ms. Leighton were unsuccessful. Ms. Leighton had moved and her telephone number had changed. The Respondent attempted to postpone the mediation, but was persuaded by opposing counsel to permit the clients to mediate in the absence of counsel.

7. The Respondent reached Ms. Leighton by telephone at 7:30 a.m. on the morning of the mediation, which was to begin at 9:30 a.m. He persuaded her to attend the mediation without counsel by assuring her that opposing counsel would not be present and that any agreements she made during mediation were not binding in the divorce.

8. Ms. Leighton attended the mediation. Although the mediation produced an agreement that was similar to what she had sought at the outset of the divorce, she felt that the

Respondent had abandoned her at the last moment and sent her into a mediation in which she felt pressured to make an agreement. She decided to obtain new counsel.

9. When Ms. Leighton obtained new counsel, she went to the Respondent's office to deliver a note requesting the Respondent to send the file to her new attorney.

10. When Respondent's secretary received the note, she told Ms. Leighton to wait at the office for a few minutes. The secretary then left the room, following which the Respondent appeared with the note. There is little conflict in the testimony about what happened next. The Respondent was angry and in a loud voice told Ms. Leighton, "This is bullshit." He told her that file would not be forwarded until he had been through it and that "There is some stuff your new lawyer is not going to see."

11. The Respondent, who explains his actions as being motivated by the feeling that he was being cheated, then began to "yell" at Ms. Leighton, "Where's my fucking money?" As the Respondent came toward her, Ms. Leighton told him that she did not want to discuss anything at that time and began to leave the office. The Respondent followed her out the door, continuing to yell at her, demanding payment of his fee, threatening suit, and telling her "You are dealing with the wrong fucking guy."

12. The incident in the Respondent's office left Ms. Leighton extremely intimidated, upset and emotionally shaken. Especially after the point at which Ms. Leighton attempted to leave, the Respondent was aware of and intended the effect his behavior was having upon her.

13. The Respondent did forward the file to successor counsel within a few days. Before doing so, however, he removed and destroyed a draft order he had prepared. At the

hearing, the Respondent justified the destruction of the draft order on the basis that “if she wasn’t going to pay for it, she wasn’t going to get it.”

14. Following his discharge, the Respondent submitted a bill for \$500 in services, plus \$50 for disbursements. The services itemized on the bill were reconstructed so as to produce the \$500 amount.

CONCLUSIONS AND DETERMINATION

1. Bar Counsel contends that the Respondent violated Maine Bar Rule 3.6(a), which requires a lawyer to take reasonable measures to keep the client informed on the status of the client’s affairs and not to neglect a legal matter entrusted to the lawyer. Although the Respondent admits not sending Ms. Leighton every item of correspondence that he received and communication could have been better, we find no violation of Maine Bar Rule 3.6(a).

2. Bar Counsel contends that Respondent’s submission of a \$500 bill to Ms. Leighton was in violation of the understanding he had reached with her concerning the fee. Although there was a conflict in the testimony as to the fee agreement, we conclude that the agreement was the product of a misunderstanding and find no violation of Maine Bar Rules as to the fee.

3. Bar Counsel contends that the behavior of the Respondent when informed of his discharge by Ms. Leighton constitutes conduct unworthy of an attorney under Maine Bar Rule 3.1(a) and prejudicial to the administration of justice under Maine Bar Rule 3.2(f)(4). Respondent is unapologetic for his behavior, citing the first amendment and asserting in oral argument that “If I want to yell at her, I’ll yell at her.” We conclude that the Respondent’s behavior was not the product of a flash of anger. We conclude that the Respondent’s behavior

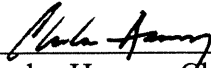
was abusive, punitive, intimidating, and intended to be so. The Respondent's abusive behavior consisted of a number of loud, obscene and threatening remarks. When Ms. Leighton communicated to the Respondent that she found the remarks offensive and attempted to leave the office, the Respondent followed her making similar remarks. Ms. Leighton testified that her small children were with her during this outburst; Respondent testified that the children were not present.

Regardless of whether the children were present, we find that the Respondent's conduct violated the Maine Bar Rules. As the Rules governing the discharge and withdrawal of employment of attorneys require, an attorney has a duty to accept a discharge from employment in a professional manner and to cooperate with the client and successor counsel in transferring the matter without prejudice to the client. An attorney's duties during discharge apply whether or not the attorney has been paid. Ms. Leighton did nothing to warrant the Respondent's outburst. She simply delivered a notice to send the file to successor counsel. Respondent's behavior frustrated her attempt to secure a smooth transition of her representation, humiliated her, intimidated her, and threatened her with a lawsuit, all of which Respondent knew and intended would leave her emotionally shaken. We find that this conduct is unworthy of an attorney and in violation of Maine Bar Rules 3.1(a) and 3.2(f).

DISPOSITION

Based upon the evidence in record before it, the panel hereby determines that the appropriate disposition of this Petition is that the Respondent should be and is hereby reprimanded.

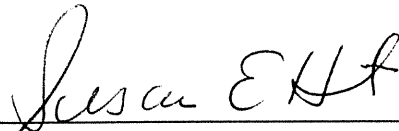
DATED: October 16, 1995



Charles Harvey, Chairman



Celeste Branham



Susan E. Hunter, Esq.